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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ALBERTO TRUJILLO,

Defendant and Appellant.

G055266

(Super. Ct. No. 17NF0666)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jonathan Fish, Judge. Affirmed.

Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Charles C. Ragland and James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

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Following the denial of his motion to suppress evidence, defendant Jose Alberto Trujillo pleaded guilty to two counts of possession for sale of a controlled substance (Health & Saf. Code §§ 11351, 11378; counts 1 & 2)¹ and one count of possession of a controlled substance paraphernalia (§ 11364, subd. (a); count 3). The court imposed a four year split sentence, pursuant to which defendant would serve 3 years 6 months in county jail followed by six months of mandatory supervision, as follows: (1) the low term of two years on count 1; (2) a concurrent term of 16 months on count 2; (3) a concurrent term of six months on count 3; and (4) two years for two prior prison term enhancements. The court also struck five prison priors.

On appeal, defendant contends the court erred by denying his motion to suppress evidence of heroin contained inside a toolbox and keys recovered from the search of a garage. According to defendant, he had a reasonable expectation of privacy in those items, which he did not disclaim. Based on a totality of the evidence, we conclude the court did not err by finding defendant failed to satisfy his burden of proving a legitimate expectation of privacy in the toolbox and keys, and, accordingly, we affirm the judgment.

FACTS

In March 2016, police officers were dispatched to a residence regarding a missing cell phone. The officers were aware the homeowner was on probation and subject to search and seizure. Upon arrival, the officers observed the homeowner and another individual leaving the residence. Although the officers commanded the two individuals to walk toward them, they instead walked away toward the garage. The homeowner dropped a straw that could be used to ingest drugs and yelled, “Shit, Cops.”

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All statutory references are to the Health and Safety Code.

After detaining the homeowner, officers entered the garage and observed two individuals and defendant. Defendant had a glass pipe in his hand and was moving it toward his mouth. An officer commanded defendant to come over, and defendant fumbled with an unlocked toolbox on a workbench, apparently trying to lock it. Defendant then picked up a set of keys from the workbench and walked to the officer with the keys in his hands. The officer detained defendant and escorted him outside.

Once outside, another officer spoke with defendant. Defendant informed the officer he was dropped off by his wife earlier in the evening. When asked what property he brought with him, defendant indicated he only brought the items placed on top of a vehicle, which included a cell phone, some money, and a digital pocket scale. The officer also asked whether defendant had any property inside the garage, and defendant responded he only had a jacket in the garage.

While defendant was outside, two other officers went inside the garage and noticed the toolbox was unlocked. They opened the toolbox and found a tar-like substance inside, which turned out to be heroin. They also discovered the set of keys taken from defendant could unlock the toolbox while another key in the set could unlock a car parked outside. The car contained a wallet with defendant's identification and other cards inside.

Defendant moved to suppress evidence of the toolbox, the lock on the toolbox, the substance inside the toolbox, and the set of keys, among other things. Defendant argued the evidence was obtained as the result of an unlawful search in violation of the Fourth and Fourteenth Amendments to the United States Constitution as well as article I, sections 1 and 13 of the California Constitution. The People opposed the motion and claimed defendant lacked standing because he did not have a reasonable expectation of privacy in the area searched or items seized.

The court held defendant lacked standing to challenge the legality of the search and seizure of the toolbox, the lock on the toolbox, the substance inside the

toolbox, and the keys. In reaching this decision, the court analyzed several factors including: (1) whether there was “any evidence that [defendant] had a right to exclude others”; (2) whether defendant had “any property or possessory interest in the place that was searched”; (3) whether “defendant exhibit[ed] a subjective expectation of privacy; (4) whether “precautions [were] taken to maintain the privacy”; (5) whether defendant was “legitimately on the premises”; and (6) whether there was any disclaimer. The court explained defendant was a “casual visitor in a home where a search occurred.” Although there was “circumstantial evidence showing a link between . . . defendant and the [tool]box with the keys on a key chain,” the court noted “[t]here [was] no testimony that the tool[box] [was] defendant’s alone.” According to the court, “[t]here [was] not overwhelming evidence as to whether [the toolbox was] owned by [defendant] or somebody else or by a community of people” The court also found defendant “disavowed [a] proprietary interest in anything but the scale, the money, the cell, and the jacket” when confronted by the police officer. Finally, the court held there was minimal or no evidence that defendant exhibited a subjective expectation of privacy, took precautions to maintain privacy, or was legitimately on the premises.

DISCUSSION

Defendant contends the court erred by finding he lacked a reasonable expectation of privacy in the keys and substance contained in the toolbox. According to defendant, he had a reasonable expectation of privacy in those items because he “was a visitor on the premises; took possession of the toolbox and keys upon encountering officers; attempted to lock the toolbox using the set of keys that also contained a key that opened a vehicle containing his wallet, [identification] card, and other cards in his name; and retained possession of the keys when approaching officers prior to being detained.” The People disagree and claim defendant disclaimed any interest in the keys or toolbox

by informing the officer he only had a jacket in the garage. Even if defendant had claimed ownership of the keys and toolbox, the People contend defendant had no reasonable expectation of privacy in the garage, which did not belong to defendant. Based on a totality of the evidence, we conclude the court did not err by finding defendant failed to satisfy his burden of proving a legitimate expectation of privacy in the toolbox and keys.

Applicable Law and Standard of Review

On appeal from the denial of a motion to suppress, “[w]e defer to the . . . court’s express or implied factual findings if supported by substantial evidence, but independently apply constitutional principles to the . . . court’s factual findings in determining the legality of the search.” (*People v. Baker* (2008) 164 Cal.App.4th 1152, 1156.)

It is well established a defendant cannot challenge the introduction of evidence obtained in an allegedly unlawful search unless the defendant has a constitutionally protected reasonable expectation of privacy. (*Rakas v. Illinois* (1978) 439 U.S. 128, 143, 148; *People v. Jenkins* (2000) 22 Cal.4th 900, 972.) The burden is on the defendant to prove he had a legitimate expectation of privacy in the area or item searched. (*Jenkins*, at p. 972.) “Evidence of the defendant’s possessory interest in the items seized, without more, is insufficient to demonstrate that expectation of privacy. [Citation.] Similarly, evidence of the defendant’s ‘mere legitimate presence on the searched premises by invitation or otherwise is insufficient in itself to create a protectable expectation.’ [Citation.] Instead, the court must look to the totality of the circumstances, including ““whether the defendant has a [property or] possessory interest in the thing seized or the place searched; whether he has the right to exclude others from that place; whether he has exhibited a subjective expectation that it would remain free from governmental invasion, whether he took normal precautions to maintain his privacy and

whether he was legitimately on the premises.”””” (People v. Williams (1992) 3 Cal.App.4th 1535, 1539.)

No Reasonable Expectation of Privacy

Here, the court properly considered the totality of the evidence and determined defendant had no reasonable expectation of privacy in the toolbox or keys. First, as the court noted, there was limited evidence as to whether defendant had a possessory interest in the garage, and it was clear he was not the homeowner. Second, there was no evidence defendant had a right to exclude others from the toolbox because there was insufficient evidence the toolbox belonged to defendant as opposed to someone else given that the area searched appeared to be a narcotics packaging and sales area. Third, there was little evidence defendant exhibited a subjective expectation of privacy or took precautions to maintain privacy in the toolbox or keys. While defendant fumbled with the toolbox apparently trying to lock it and held the keys when approaching the officer, this was insufficient by itself to suggest defendant had a possessory interest in the unlocked toolbox or took precautions to maintain privacy in the items. Fourth, although defendant was apparently dropped off at the residence, there was no other evidence as to whether defendant was legitimately on the premises. Fifth, defendant did not claim the toolbox or keys when the officer asked what items in the garage belonged to him. Considering the totality of this evidence, we agree with the court that defendant failed to carry his burden of establishing a legitimate expectation of privacy in the toolbox or keys.

Ignoring the totality of the circumstances test, defendant disputes the court’s finding that he disclaimed any interest in the toolbox. But even if we were to analyze the search on that basis alone, he would be unsuccessful.

“[A] warrantless search and seizure involving abandoned property is not unlawful, because a person has no reasonable expectation of privacy in such property.” (People v. Parson (2008) 44 Cal.4th 332, 345.) “[T]he intent to abandon is determined

by objective factors, not the defendant's subjective intent. "Abandonment is primarily a question of intent, and intent may be inferred from words, acts, and other *objective* facts. [Citations.] Abandonment here is not meant in the strict property-right sense, but rests instead on whether the person so relinquished his interest in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search.'"" (*People v. Daggs* (2005) 133 Cal.App.4th 361, 365-366.) In particular, "a disclaimer of proprietary or possessory interest in the area searched or the evidence discovered *terminates* the legitimate expectation of privacy over such area or items." (*People v. Stanislawski* (1986) 180 Cal.App.3d 748, 757, *italics added*.) "The question whether property is abandoned is an issue of fact, and the court's finding must be upheld if supported by substantial evidence." (*Daggs*, at p. 365.)

Here, there was evidence defendant disclaimed any expectation of privacy because the officer specifically asked defendant what items in the garage belonged to him and defendant's response was more than a mere passive failure to claim incriminating evidence. During the hearing, an officer testified he asked defendant what he had brought with him to the residence. Defendant replied he only brought certain items placed on top of a vehicle, which included a cell phone, some money, and a digital pocket scale. The officer further testified he asked defendant if he had any property inside the garage. Defendant responded he only had a jacket inside the garage and did not claim ownership of the toolbox, keys, or any other item. Based on these responses, the court could reasonably draw the inference defendant intended to disclaim any interest in the toolbox and keys, i.e., he relinquished any expectation of privacy with respect to those items.

People v. Dasilva (1989) 207 Cal.App.3d 43 is on point. In *Dasilva*, the court found the defendant lacked standing to suppress evidence because he disclaimed ownership of certain containers in the trunk of a car he was driving at the time of a warrantless search. (*Id.* at pp. 46-47.) The defendant consented to a search of the trunk

and told the officer a guitar case was the only item in the trunk that belonged to him. (*Id.* at p. 46.) After the officer discovered containers in the trunk and asked if the defendant objected to a search of those items, the defendant again stated “the only thing that was his was the guitar case and he did not know anything about the other items in the trunk.” (*Ibid.*) The court held the defendant did not have a reasonable expectation of privacy in the containers because he disclaimed ownership of the contents of the trunk other than the guitar case. (*Id.* at p. 49.) The court noted, “Had [the defendant] told [the officer] he did not own the bags in the trunk but was using them, he might have retained an expectation of privacy over the bags, while disclaiming ownership. He did not do so.” (*Id.* at p. 48.)

Like the defendant in *Dasilva*, defendant did not claim ownership of the items subject to the search. Instead, defendant indicated the only items belonging to him were a cell phone, money, a digital pocket scale, and a jacket. While defendant argues *Dasilva* is distinguishable because the defendant in that case “affirmatively and specifically disclaimed the items at issue,” defendant cites no authority, nor has our research uncovered any, which suggests the officer was required to ask about each individual item in the garage and defendant had to separately disclaim each item.

Defendant’s reliance on *People v. Casares* (2016) 62 Cal.4th 808 (*Casares*) is also misplaced. In *Casares*, our Supreme Court found the defendant had standing to challenge a warrantless search of a car. (*Id.* at pp. 835-836.) An officer recovered keys from the defendant and discovered the keys opened a car outside. (*Id.* at pp. 834-835.) The officer had seen the defendant in the driver’s seat of the car on several occasions but had never seen him driving the car. (*Ibid.*) When asked by the officer if he owned any vehicles, the defendant indicated he did not and specifically denied the car outside belonged to him. (*Id.* at p. 835.) In finding the defendant had standing to challenge the search, our Supreme Court noted “[t]he record [did] not support the trial court’s implicit finding that defendant disclaimed a possessory interest in the car merely by virtue of

denying *ownership* of it” (*Ibid.*) The court explained “the record [did] not reflect that defendant was ever asked, for example, whether he had borrowed the car with its owner’s permission, and there is no evidence defendant was not legitimately in possession of the car when police searched it.” (*Id.* at pp. 835-836.)

The facts in *Casares* are distinguishable from the facts in this case. Although the defendant in *Casares* disclaimed an ownership interest in the car, there was evidence suggesting he had a possessory interest in the car because the officer had seen him in the driver’s seat on several occasions. Here, on the other hand, there is no evidence defendant had a possessory interest in the toolbox or keys. The officers saw three individuals in the garage and noticed defendant standing next to the unlocked toolbox, which he fumbled with in an apparent attempt to lock it. The officers also discovered the set of keys opened a car outside, which apparently did not belong to defendant but had his wallet inside. These facts alone do not suggest defendant had a possessory interest in the toolbox or keys especially given defendant’s failure to claim those items when questioned by police officers. Thus, we do not find *Casares* is controlling here.

Defendant also relies on *People v. Ybarra* (1991) 233 Cal.App.3d 1353. In *Ybarra*, the court held the defendant had standing to challenge the search of his locked toolbox because there was evidence the defendant “took normal precautions to keep the contents of the box private and expected it would remain free from governmental intrusion.” (*Id.* at p. 1361.) The defendant specifically placed a padlocked toolbox in his friend’s unoccupied and locked motel room, was in close proximity when the search was conducted, and had a key to the premises. (*Ibid.*) The defendant in *Ybarra* never disclaimed any privacy interest in his toolbox, whereas defendant in the instant case told the officer the only property in the garage that was his was his jacket. And unlike *Ybarra*, there is no evidence the toolbox belonged to defendant as opposed to someone else or a group of people. The instant case bears little resemblance to *Ybarra*.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.